IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1360 of 1997

in

SPECIAL CIVIL APPLICATIONNo 3463 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ARVINDBHAI JETHABHAI JHALA

Appearance:

MR SK PATEL for Appellants

MR PM BHATT for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 19/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Admitted. Mr. P.M.Bhatt, learned counsel waives service of notice on behalf of the respondents. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, the appeal is taken-up for final hearing today.

2. By means of filing this appeal under Clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated December 19, 1996 rendered by the learned Single Judge in Special Civil Application No. 3463/96, by which order dated December 30, 1995 passed by the Competent Authority and Additional Collector, Vadodara under section 21(2) of the Urban Land (Ceiling and Regulation) Act, 1976 declaring land belonging to respondent no.1 to be excess land as well as judgment dated March 15, 1996 rendered by the Urban Land Tribunal and Ex-officio Secretary to Government, Revenue Department, Ahmedabad in Appeal No.2/96 upholding the order of the Competent Authority dated December 30, 1995, are set aside.

3. One Kamlaben Bhagwanbhai was the owner of land bearing survey No.157/2, admeasuring 11834 sq.mts., of village Tarsali situated within Vadodara Urban Agglomeration. The land was declared to be excess vacant land in the hands of Kamalaben. Kamlaben had made an application under section 21(1) of the Urban Land (Ceiling and Regulation) Act, 1976 ("the Act" for short) and prayed the Competent Authority not to declare the land to be excess land for the purposes of Chapter-III of the Act and to permit her to hold the land, as she wanted to utilize the land for construction of dwelling units for the accommodation of weaker sections of the society. The Competent Authority had passed an order under section 21(1) of the Act on June 22, 1987 and declared that the land in question would not be treated as excess land. By the said order, Kamlaben was permitted to hold the land for utilizing the same for construction of dwelling units for weaker sections of the society. Under the said order, Kamlaben was permitted to retain the land on conditions stipulated therein and one of the conditions stipulated was that she should construct 129 dwelling units of prescribed area for the people belonging to weaker sections of the society. It was also stipulated in the said order that the units to be constructed should be sold at the price determined by said order. As per order dated June 22, 1987, Kamlaben was required to commence construction work within one year from the date

of order and complete the same within five years from the date of order i.e. she was required to construct 129 dwelling units by June 22, 1992. By an order dated October 16, 1990, terms and conditions provided under order dated June 22, 1987 were modified. Kamlaben was given development permission on March 1, 1989. After the above referred to modification in terms and conditions stipulated in order dated June 22, 1987, fresh development permission was issued in her favour on January 25, 1991. Kamlaben was also granted permission for non-agricultural use of the land by the Collector on August 18, 1989. However, Kamlaben had failed to commence construction work according to the scheme sanctioned within the period of one year as provided under the terms and conditions of exemption. The Competent Authority, therefore, had issued notice dated March 13, 1990 calling upon Kamlaben to show cause as to why exemption granted under section 21(1) of the Act should not be cancelled. A reply was submitted by Kamlaben to the show cause notice and in view of the contents of the said reply, show-cause notice dated March 13, 1990 was withdrawn vide order dated October 1, 1990. After construction of dwelling units, Kamlaben had applied for occupation certificates to the Municipal Corporation. The occupation certificates were issued by Municipal Corporation on February 1, 1992, April 30, 1992, October 3, 1992 and November 12, 1993. The occupation certificates issued to Kamlaben indicate that construction of 40 dwelling units was completed on January 1, 1992, whereas construction of 45 dwelling units was completed on April 5, 1992 and construction of 35 dwelling units was completed on July 1, 1992 whereas construction of 9 dwelling units was completed on July 5, 1993. Thus, construction of all the 129 dwelling units was completed by July 5, 1993 and occupation certificates were also issued. From the record of the case, it transpires that Kamlaben expired and the land devolved upon her son Manharbhai, who is the respondent in the appeal. On November 13, 1995, the Competent Authority issued a notice calling upon the respondent to show cause as to why exemption granted under section 21(1) of the Act should not be cancelled on account of breach of several conditions of grant of exemption enumerated in the said show-cause notice. The Competent Authority after hearing the respondent by its order dated December 30, 1995 rejected the contentions raised by the respondent and cancelled the scheme sanctioned under section 21(1) of the Act. By the said order, the Competent Authority declared the land tobe excess vacant land. Feeling aggrieved by the said order, the appellant preferred Appeal No.2/96 before the Urban Land Tribunal,

which rejected the same by judgment dated March 15, 1996. Thereupon, the respondent instituted Special Civil Application No. 3463/96 in the High Court. The learned Single Judge has allowed the petition by judgment dated December 19, 1996 holding that as buyers/occupants of the dwelling units were not heard, the order passed by the Competent Authority as confirmed by the Tribunal was bad in law. This view expressed by the learned Single Judge in the impugned judgment has given rise to the present appeal.

4. Mr. S.K.Patel, learned counsel for the appellants submitted that as deceased Kamlaben had committed breach of several conditions of grant of exemption enumerated in the show-cause notice dated November 13, 1995, order passed by the Competent Authority cancelling the scheme sanctioned under section 21(1) of the Act and declaring the land to be excess land, should not have been set aside by the learned Single Judge. It was claimed that buyers or occupants of dwelling units are not required to be heard while cancelling the scheme sanctioned under section 21(1) of the Act in view of the provisions contained in section 21 of the Act because it is the holder of the land who was granted permission to retain the land for specified purpose and if any breach is committed by the holder, then only the holder of the land is required to be heard and not buyers who may have purchased the dwelling units. What was emphasized was that unless and until completion certificate is issued to the holder of the land, possession of dwelling units could not have been handed over to the buyers and, therefore, the order passed by the Competent Authority should not have been set aside on the ground that buyers were not heard by the Competent Authority before passing the order.

5. Mr. P.M.Bhatt, learned counsel for the respondent submitted that in view of the scheme of the Act and more particularly, the provisions of section 21 read with Rule 11-A of the Urban Land (Ceiling & Regulation) Rules, 1976, proprietary rights are conferred on the buyers and, therefore, the view taken by the learned Single Judge that the Competent Authority could not have passed the order without hearing the buyers being eminently just, should be upheld by the Court in the present appeal.

6. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. The question which falls for our consideration in the appeal is whether the persons to

whom the dwelling units are sold by the holder of vacant land, who is permitted to hold excess vacant land under section 21(1) of the Act, should be heard by the Competent Authority before passing an order under section 21(2) of the Act.

7. Section 21 provides that where a person holds any vacant land in excess of the ceiling limit and declares before Competent Authority that such land is to be utilised for construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, the Competent Authority may declare such land not to be excess land and permit such person to continue to hold such land for the aforesaid purpose subject to such terms and conditions as may be prescribed by rules. A provision has been made in sub-section (2) of Section 21 to the effect that when any person contravenes any of the conditions subject to which permission for holding land has been granted, the Competent Authority shall by an order and after giving such person an opportunity of being heard,declare such land to be excess land and thereupon all the provisions of Chapter-3 shall apply accordingly.

8. In exercise of powers conferred by sub-section (1) read with sub-section (2) of Section 46 of the Act, Central Government has made rules known as 'Urban Land (Ceiling and Regulation) Rules, 1976. Rule 11-A makes provision for terms and conditions subject to which a person may be permitted to continue to hold excess vacant land under sub-section (1) of Section 21 of the Act and the Rules read as under:-

> "11-A. Terms and conditions subject to which a person may be permitted to continue to hold excess vacant land under sub-section (1) of Sec.21 : The terms and conditions subject to which the competent authority may permit a person to continue to hold vacant land,in excess of the ceiling limit,under sub-section (1) of Sec.21, for the construction of dwelling units for the accommodation of the weaker sections of the society in accordance with any scheme shall be the terms and conditions specified in Sch.1-A."

9. A bare reading of the above quoted Rule makes it evident that terms and conditions subject to which Competent Authority may permit a person to continue to hold vacant land in excess of ceiling under sub-section

(1) of Section 21 for construction of dwelling units for the accommodation of weaker sections of the society in accordance with the Scheme are the terms and conditions specified in Schedule I-A. Schedule I-A specifies terms and conditions subject to which a person may be permitted to continue to hold excess vacant land under sub-section (1) of Section 21. As those terms and conditions are relevant for adjudicating the point involved in the appeal, they are reproduced hereinbelow:-

"Terms and conditions subject to which a person may be permitted to continue to hold excess vacant land under sub-section (1) of Sec.21.

1. The construction of dwelling units for the accommodation of the weaker sections of the society in the vacant land, in relation to which the declaration of the competent authority is sought or made under section (1) of Sec.21, shall be consistent with the Master Plan,if any, for the urban agglomeration or that part of the urban agglomeration wherein such land is situated or, if there is no Master Plan for the urban agglomeration or such part thereof, such directions as the State Government may give in relation to land used in the urban agglomeration,or such part having regard to the planned development of the urban agglomeration or any part thereof.

2. No less than fifty per cent of the total number of dwelling units constructed by any person under the scheme shall have plinth area not exceeding forty square metres.

3. The construction of the dwelling units shall be completed within five years from the date on which the declaration is made by the competent authority under sub-section (1) of Sec.21, permitting the person concerned to continue to hold the vacant land for the purpose specified in that sub-section.

4.(1) The dwelling units constructed under the scheme shall be sold by outright sale or on hire purchase or shall be let out on rent to the weaker sections ofthe society.

(2) Where any dwelling unit is sold by outright sale, the sale price which such person shall be entitled to receive shall not exceed a sum consisting of;-

(i) the actual cost of construction of the dwelling-unit.

(ii) either ten times the net average annual

income actually derived from the land for the period of five consecutive years referred to in Cl.(a) of sub-section (1) of Sec.11 or five times the amount he would be entitled to under Cl.(b) of sub-section (1) of that section, whichever is higher, in respect of the land occupied by such dwelling-unit and the land appurtenant thereto,if such land is deemed to have been acquired by the State Government under sub-section (3) of Sec. 10; and,

(iii) a sum calculated at the rate of fifteen per cent, on such cost of construction and such cost of land referred to in (ii) above.

Explanation :-Where the dwelling-unit is part of a building, being a group housing, the proportionate share in relation to the dwelling-unit in the amount paid in relation to the land occupied by the building and the land appurtenant thereto, determined on the basis of the ratio of the plinth area of the dwelling-unit to the total plinth area of the building, only shall be taken into account in determining the sale price of the dwelling-unit under this sub-paragraph.

(3) Where any dwelling unit is sold on hire-purchase, such person shall be entitled to get, in addition on the sale price determined in accordance with sub-paragraph (2), interest calculated at the rate of ten per cent per annum on the unpaid portion of the sale price.

(4) Where any dwelling unit is let-out on rent, the rent shall be worked out in such a way that such person would get a return not exceeding ten percent per annum on the sale price of the dwelling-unit determined in accordance with sub-paragraph (2).

Explanation:- For the removal of doubts it is hereby declared that in working out the return on the sale price which such person may get under this sub-paragraph by way of rent the fact that the dwelling-unit has been vacant, or is likely to remain vacant,for any part ofthe year shall not be taken into account.

5. Between the date on which a declaration in relation to the vacant land is made by the competent authority under sub-section (1) of Sec.21 and the date of completion of the construction of the dwelling-units, the person concerned shall not transfer the land by way of sale,gift, lease or otherwise:

Provided that such personmay mortgage it without possession to the State Government or Central Government or a bank as defined in Sec. 19 for getting a loan for the purpose of constructing such dwelling-units."

10. A bare reading of Clause-4 of Schedule I-A makes it abundantly clear that the dwelling units constructed by holder of vacant excess land have to be sold at a price to be determined in accordance with sub-clause(2) of Clause-4 to the members who belong to weaker sections of the society. Further clause-5 of Schedule I-A leaves no manner of doubt that after completion of the construction of dwelling units, the holder of excess vacant land can transfer the land on which dwelling unit is constructed by way of sale, gift, lease or otherwise. The assertion made by the respondent that units constructed are sold and each buyer has paid price of the dwelling unit as well as piece of land on which dwelling unit is constructed, to the land holder, is not disputed. On completion of scheme as envisaged by the Act and allotment of dwelling unit to a member belonging to weaker section of the society, the holder of vacant excess land does not continue to have interest in the land for all time to come. When an order is sought to be made under section 21(2) of the Act, it is bound to affect adversely those persons to whom dwelling units with land are sold and who have become owners of the dwelling units as well as lands on which dwelling units are constructed. Section 21(2) of the Act leaves no discretion to the Competent Authority and once it is held by the Competent Authority that conditions subject to which the permission was granted under section

21(1) of the Act are/were contravened, the land has got to be declared as excess land to which provisions of Chapter-3 of the Act would apply. When the land on which dwelling units are constructed is declared to be excess land to which provisions of Chapter-3 apply, there is no manner of doubt that it would adversely affect the purchaser of the dwelling unit because the excess land so declared stands acquired by the Government and is subject to disposal as contemplated by section 23 of the Act. Over and above the land holders, even those to whom dwelling units are sold with land can also amongst other things point out to the Competent Authority that their income is such which would entitle them to be treated as members belonging to weaker sections of the society and that other contravention, if any, on the part of land holder should be condoned.

11. The phrase 'natural justice' is not capable of static and precise definition. However, a duty to act fairly i.e. in consonance with the fundamental principles of substantive justice, is generally implied, irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions of proceedings be given adequate notice of what is proposed so that they may be in a position, (a) to make representation on their own behalf; (b) or to appear at a hearing or inquiry (if one is held); and (c) to prepare their own case effectively and answer the case (if any) they have to meet.All actions against affected parties which involve penal or adverse consequences must be in accordance with the principles of natural justice. The rules of natural justice do not supplant law, but supplement it. If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. As is well settled, rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. It is not permissible to interpret any statutory instrument so as to exclude natural justice,unless the language of the instrument leaves no option tothe Court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. A bare reading of section 21(2) of the Act makes it very clear that there is no statutory provision which specifically excludes application of rules of natural justice so far as those to whom dwelling units are sold are concerned. Having regard to the language and basic scheme of the provisions conferring powers on Competent Authority under section

21(2) of the Act, the terms and conditions which are to be stipulated under section 21(1) of the Act,the purpose for which holder of an excess vacant land is to be permitted to hold the land as well as consequences which would follow from declaration made under section 21(2) of the Act, we are of the view that application of rules of natural justice is not excluded by implication. When the administrative decision taken by the authority involves civil consequences of a grave nature, Courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features unless viewed pragmatically,it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. Having too far reaching adverse civil consequences which are likely to result from declaration which may be made by the Competent Authority under section 21(2) of the Act, we are of the view that persons to whom dwelling units are sold should be heard before making declaration under section 21(2) of the Act.

12. At this stage it would be instructive to refer to a Division Bench judgment of our Court rendered in the case of H.H.Parmar Vs. Collector,Rajkot & Anr., 1979(2) G.L.R. 97. In the said case the petitioner was appointed as Chief Officer of the Municipality by resolution which was passed by the Municipality. When the fact of appointment came to the notice of Collector,Rajkot,he in exercise of powers conferred on him by section 258 of the Gujarat Municipalities Act,1963 stayed operation of the said resolution and issued a notice to the Municipality to show cause why its resolution should not be permanently stayed. The Municipality filed petition in the High Court in which order of Collector staying implementation of the said resolution was challenged. That petition was summarily dismissed. Letters Patent Appeal filed against that order was also dismissed. The Collector after hearing the Municipality confirmed his interim order and permanently stayed the implementation of the said resolution. Accordingly, the Municipality intimated to the petitioner that Collector had permanently stayed implementation of the resolution by which he was appointed as Chief Officer. It was that order which was challenged by the petitioner before the High Court. One of the arguments which was advanced by the petitioner of the said case was that he was not given an opportunity of being heard before the Collector and, therefore, the

impugned order was liable to be set aside. The Division Bench considered the question whether in the context of sub-section (1) of section 258, the petitioner was entitled to be heard before Collector had made the impugned order. It was argued on behalf of the Collector that 3rd party, who had received some benefits under the resolution, was not entitled to be heard before the benefit which had accrued to him was withdrawn by the Collector by making an order under section 258(1) of the Act. After examining the scheme of section 258(1) of the Act, the Division Bench has held that if an order of appointment has been issued and appointee has taken charge of his office under the resolution, a right accrues to the appointee to hold that office and the question whether that right has lawfully accrued to him or unlawfully accrued to him cannot be decided against him unless he has been heard and, therefore, it was necessary for the Collector before taking an action under section 258 of the Gujarat Municipalities Act to issue notice to the petitioner giving him a reasonable opportunity of being heard before the impugned order was made. In our view, the principle laid down by the Division Bench will apply with all force to the facts of the present case. The persons to whom the dwelling units are sold with land have derived benefits under the Scheme which was sanctioned under section 21(1) of the Act. The making of declaration under section 21(2) of the Act has effect of withdrawing benefits made available to members of weaker sections of the society. The declaration also would affect their proprietory rights. Under the circumstances, we are of the view that without hearing those persons to whom dwelling units were sold with land, the impugned order could not have been passed by the Competent Authority.

13. We are aware of the fact that if section 21(2) of the Act is construed to mean that those persons to whom dwelling units are sold should also be heard before making declaration as contemplated by that provision, it is likely to create some administrative problems of issuing and serving notices to all members to whom dwelling units are sold. However, these difficulties can be taken care of by necessary clarification that a public notice in a local newspaper would be sufficient compliance of the principles of natural justice and the affected persons would be entitled to make representation through recognized agent such as Secretary of the Society etc. However, the principles of natural justice cannot be sacrified at the altar of administrative convenience or celerity. It is an admitted position that the buyers to whom the dwelling units were sold, were not heard by

the Competent Authority before passing the impugned order. In our view, therefore, the learned Single Judge was justified in setting aside the order passed by the Competent Authority as confirmed by the Urban Land Tribunal. The learned counsel for the appellants has failed to point out any error in the judgment of the learned Single Judge so as to warrant our interference in the present appeal. The appeal, therefore, cannot be accepted and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed.

(J.M.Panchal, J.)

(A.M.Kapadia,J.)

(patel)